Pelita Melor Sdn Bhd v Superintendent of Lands & Surveys, Miri Division

HIGH COURT (MIRI) — LAND REFERENCE NOS 15–01 OF 2010(MR), 15–06 OF 2010 AND 15–07 OF 2010
STEPHEN CHUNG JC
11 JANUARY 2012

Land Law — Acquisition of land — Compensation — Lands alienated to objectors by way of provisional leases — Survey of lands not done — Part of lands acquired for gas pipeline reserve — Compensating authority of view objectors could not be owners of lands in absence of land survey — Whether objectors registered owners of lands and entitled to compensation

Three parcels of land ('the lands') situated next to each other and owned by three separate parties ('the objectors') had, by way of provisional leases, been alienated to the objectors to be developed into oil palm plantations. The lands had not been surveyed. The objectors, nevertheless, paid land premium for the lands, entered into possession and developed the lands with roads, bridges, oil palm plantations and other infrastructure without objection from the respondent. Subsequently, the government gave notice that it was compulsorily acquiring part of the lands, covering a total area of 48.320 hectares, for use as a gas pipeline reserve. The respondent compensated the objectors only for the cultivated oil palm, the gravel roads and the wooden bridges on the acquired land but paid no compensation for the acquired land itself on the ground that as the lands had not been surveyed, the actual area alienated to the objectors had not been determined and accordingly they were not the owners thereof. Such was the respondent's interpretation of s 28(1) of the Sarawak Land Code ('SLC') which was reflected as a condition in the provisional leases issued to the objectors that read: 'The holder of this provisional lease shall not be entitled to a lease of an area equal to the area above stated but only to such an area as the survey shows to be available'. The objectors accepted the awards made by the respondent under protest. In the reference of the matter to the High Court, the objectors contended, inter alia, that compensation should be paid for the acquired land.

Held, granting the objectors compensation for the acquired land:

(1) The fact that the lands had not been surveyed pursuant to s 28 of the SLC could not be interpreted to mean, and did not mean, the lands did not belong to the objectors. The proviso to s 28(1) made it clear that when immediate survey of any state land was impracticable, the respondent may order a provisional lease to be executed in favour of the person

entitled. In the three cases before the court, the respondent did issue provisional leases to the objectors for the lands alienated to them pursuant to s 28 (see paras 15–16 & 20). A

(2) After the lands were alienated to the objectors and provisional leases for them were issued, the objectors became registered owners of the lands. Being registered owners, their rights to the lands were protected under art 13 of the Federal Constitution and they were clearly entitled to be compensated for those parts of their lands which were acquired for the gas pipeline project (see paras 17 & 23). B

(3) It did not make sense that the respondent compensated the objectors for the roads and bridges built on the acquired land but refused to pay compensation for the land actually acquired on the basis the lands had not been surveyed (see para 19). C

(4) While the courts recognised that there were several methods of valuation, they have consistently ruled that in valuation of land, the safest guide was evidence of sales of similar lands of similar quality or position in the locality at or prior to the time of acquisition. The prices paid for such sales could be used as comparables subject to the making of allowances for such circumstances as locality, category of land use, size and shape of the parcel of land and date of transaction (see para 34). D E

[Bahasa Malaysia summary

Tiga bidang tanah ('tanah-tanah tersebut') yang terletak bersebelahan antara satu sama lain dan dimiliki oleh tiga pihak berasingan ('pembantah-pembantah') telah, dengan cara pajakan sementara, diberi milik kepada pembantah-pembantah untuk dibangunkan menjadi ladang kelapa sawit. Tanah-tanah tersebut tidak diukur. Pembantah-pembantah walau bagaimanapun, membayar premium tanah bagi tanah-tanah tersebut, memeterai milikan dan membangunkan tanah-tanah tersebut dengan jalan raya, jambatan, ladang kelapa sawit dan infrastruktur lain tanpa bantahan daripada responden. Selepas itu, kerajaan telah memberi notis bahawa ia akan secara wajib mengambil sebahagian daripada tanah-tanah tersebut, yang meliputi kawasan sebanyak 48,320 hektar, untuk digunakan sebagai rizab talian paip gas. Responden memampas pembantah-pembantah hanya untuk tanaman kelapa sawit, jalan kerikil dan jambatan kayu di atas tanah yang diambil tetapi tidak membayar pampasan bagi tanah yang diambil sendiri atas alasan bahawa tanah tidak dikaji, kawasan sebenar yang diperuntukkan kepada pembantah-pembantah tidak ditentukan dan sewajarnya mereka bukanlah pemiliknya. Sedemikian adalah tafsiran responden bagi s 28(1) Kanun Tanah Sarawak ('KTS') yang telah dicerminkan sebagai satu syarat dalam pajakan sementara yang dikeluarkan kepada yang pembantah-pembantah yang berbunyi: 'The holder of this provisional lease shall not be entitled to a lease of an area equal to the area above stated but only to such an area as the survey F G H I

shows to be available'. Pembantah-pembantah menerima award yang dibuat oleh responden di bawah bantahan. Dalam merujuk perkara tersebut kepada Mahkamah Tinggi, pembantah-pembantah menghujahkan, antara lain, pampasan perlu dibayar bagi tanah yang diambil.

Diputuskan, membenarkan pampasan bagi pembantah-pembantah untuk tanah yang diambil:

(1) Fakta bahawa tanah telah tidak diukur menurut s 28 KTS tidak dapat ditafsirkan untuk bermakna, dan tidak bermakna, tanah-tanah tersebut tidak dimiliki oleh pembantah-pembantah. Proviso kepada s 28(1) menyatakan dengan jelas bahawa apabila pengukuran serta-merta mana-mana tanah negeri adalah tidak praktikal, responden boleh memerintahkan pajakan sementara agar dilaksanakan memihak kepada orang yang berhak. Dalam tiga kes di hadapan mahkamah, responden telah mengeluarkan pajakan sementara kepada pembantah-pembantah untuk tanah yang diperuntukkan kepada mereka menurut s 28 (lihat perenggan 15–16 & 20).

(2) Selepas tanah-tanah tersebut diberi milik kepada pembantah-pembantah dan pajakan sementara bagi mereka telah dikeluarkan, pembantah-pembantah menjadi pemilik-pemilik berdaftar tanah-tanah tersebut. Sebagai pemilik-pemilik berdaftar, hak-hak mereka kepada tanah dilindungi di bawah perkara 13 Perlembagaan Persekutuan dan mereka jelas berhak untuk diberi pampasan bagi bahagian tanah mereka yang telah diambil untuk projek saluran paip gas (lihat perenggan 17 & 23).

(3) Adalah tidak masuk akal bahawa responden memampas pembantah-pembantah bagi jalan dan jambatan yang dibina di atas tanah yang diambil tetapi enggan untuk membayar pampasan bagi tanah yang sebenarnya diambil atas alasan tanah-tanah tersebut tidak diukur (lihat perenggan 19).

(4) Walaupun mahkamah mengiktiraf bahawa terdapat beberapa kaedah penilaian, mereka telah secara konsisten memutuskan bahawa dalam penilaian tanah, panduan paling selamat adalah bukti jualan tanah yang sama kualiti atau kedudukan yang serupa di kawasan pada atau sebelum masa pengambilan. Harga yang dibayar untuk jualan tersebut boleh digunakan sebagai pembeza tertakluk kepada elaun yang dibuat bagi hal keadaan seperti lokaliti, kategori penggunaan tanah, saiz, dan bentuk petak tanah dan tarikh transaksi (lihat perenggan 34).]

Notes

For cases on compensation, see 8(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 2125–2169.

Cases referred to

Kiu Yuk Chai & Anor v Superintendent of Lands and Surveys, Sarikei Division [2002] MLJU 371; [2002] 8 CLJ 540, HC (refd)

Leong Kam Hoong v Pentadbir Tanah Daerah Seberang Perai Tengah Bukit Mertajam and another appeal [2001] 1 MLJ 186; [2001] 1 CLJ 1, CA (refd)

New Serendah Rubber Co Ltd v Collector of Land Revenue, Kuala Lumpur [1981] 2 MLJ 344; [1981] CLJ 131, CA (refd)

Novelpac-Puncakdana Plantation Sdn Bhd v Anchih ak Buap & Ors [2000] 4 MLJ 524, CA (refd)

Ong Yan & Anor v Collector of Land Revenue, Alor Gajah Malacca [1986] 1 MLJ 405, ACJ (refd)

Pentadbir Tanah Daerah Kota Tinggi v Siti Zakiyah bte Sh Abu Bakar & Ors [2006] 2 MLJ 426; [2005] 4 CLJ 630, FC (refd)

S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors [1982] 1 MLJ 204, FC (refd)

Sebekai Plantation Sdn Bhd v The Superintendent, Lands and Surveys, Bintulu Division (Land Reference No 15–04 of 2008 (BTU)) (refd)

SOP Plantations (Suai) Sdn Bhd v Ading ak Layang & Ors [2004] 4 MLJ 180, HC (refd)

Superintendent of Lands and Surveys, Sarawak v Aik Hoe & Co Ltd [1966] 1 MLJ 243, FC (refd)

Legislation referred to

Federal Constitution art 13

Sarawak Land Code (Cap 81) ss 28, 28(1), (3), (4), 32, 34, 37, 38, 46, 47, 48, 49, 51, 56(1), 60, 60(1), 61

Norhisham bin Shafie (Abdul Ghani bin Sulaiman with him) for the assessors.
Siti Norhashidah (Huang & Co Advocates) for the objector.
Ivy Suli Untup (State Attorney General's Chambers) for the respondent.

Stephen Chung JC:

[1] There are three land references which were heard together, upon the requests of the parties in order to save time and costs, because the three parcels of land are situated next to each other, the three objectors have the same address at No 85–86, Pusat Suria Permata, Jalan Upper Lanang 12A, 96000 Sibu, counsel for the parties in each of the land references are the same and the witnesses in the land references are the same.

[2] In Land Reference No 15–01 of 2010(MR), Pelita Melor Sdn Bhd ('the objector') is the registered owner of two parcels of land situated at Sungai Peking and Sungai Lelak, Tinjar, Baram and described as Lot 25 and Lot 27 Tinjar Land District. By a s 47 notice published on 30 November 2006, notice

was given that the land described in the schedule which is situated between Sungai Magoh at Miri/Limbang Divisional Boundary and Sungai Dulang at Miri/Limbang Divisional Boundary is likely to be needed for the gas pipeline reserve by Petronas.

[3] By a s 48 notice published on 5 April 2007, two lots of land described as Lot 6 and Lot 15 of Block 23 containing an aggregate area of 15.138 hectares being part of Lot 25 Tinjar Land District and two lots of land described as Lot 5 and Lot 8 of Block 13 containing an aggregate area of 2.4893 hectares being part of Lot 27 Tinjar Land District were required for the gas pipeline project. An existing gravel road with a total length of 43.38 metres and one wooden bridge on Lot 27 Tinjar Land District were affected by the acquisitions.

[4] An inquiry was held on 28 August 2007 by the superintendent of Lands and Surveys to determine the amount of compensation to be paid for the acquisition of the four lots of land. The superintendent did not pay any compensation for the four lots of land because of para (iii) of the special conditions contained in the provisional lease of state land of Lot 25 and Lot 27 Tinjar Land District. As there was no crop planted in the four lots acquired, no compensation was paid for any crops affected. The superintendent paid RM145,336 for the gravel road and wooden bridge affected by the acquisitions.

[5] In Land Reference No 15–06 of 2010(MR), Pelita Splendid Sdn Bhd ('the objector') is the registered owner of two parcels of land situated at Sungai Paong, Long Lama, Baram and described as Lot 1 and Lot 16 both of Block 6 Telang Usang Land District.

[6] By a s 48 notice published on 5 March 2009, one lot of land described as Lot 15 Block 6 being part of Lot 1 Block 5 Telang Usang Land District and one lot of land described as Lot 11 Block 6 being part of Lot 27 Tinjar Land District, containing an aggregate area of 13.924 hectares, were required for the gas pipeline project. The acquisition included an existing gravel road with a total length of 824.39m.

[7] An inquiry was held on 29 May 2008 by the superintendent of Lands and Surveys to determine the amount of compensation to be paid for the acquisition of the two lots of land. The superintendent did not pay any compensation for the two lots of land because of para (iii) of the special conditions contained in the respective provisional lease of state land. The superintendent paid compensation for the crops, ie oil palms, planted in the two lots of land acquired, for a sum of RM47,952 and paid RM52,728.48 for the gravel road affected.

[8] In Land Reference No 15–07 of 2010(MR), Baram Trading Sdn Bhd (the objector) is the registered owner of two parcels of land situated at Sungai Paong, Long Lama, Baram and described as Lot 2 Block 6 and Lot 10 Block 6 of Telang Usang Land District. A

[9] By a s 48 notice published on 5 March 2009, two lots of land described as Lot 9 and Lot 12 of Block 6 containing an aggregate area of 16.769 hectares being part of Lot 2 and Lot 10 Block 6 Telang Usang Land District were required for the gas pipeline project. The acquisition included an existing gravel road with a length of 2 km and six wooden bridges. B C

[10] An inquiry was also held on 29 May 2008 by the superintendent of Lands and Surveys to determine the amount of compensation to be paid for the acquisition of the two lots of land. The superintendent did not pay any compensation for the two lots of land because of para (iii) of the special conditions contained in the respective provisional lease of state land. The superintendent paid compensation for the crops, ie oil palms planted in the two lots of land acquired, for a sum of RM66,096 and paid RM690,253.76 for the gravel road and wooden bridges, making a total of RM756,349.76 paid as compensation to the objector. D E

[11] The objectors accepted the awards under protests and requested the superintendent to refer the matters for the determination of the High Court under s 56(1) of the Land Code. The grounds of objection in each case were similar. Firstly, that although the lands were acquired, no award was made for the lands acquired and in all fairness compensation should be paid for the lands acquired. The objectors valued the lands at RM8,804.62 per hectare compared to the valuation made by the superintendent at RM5,000 per hectare. Secondly, the provisional leases to the lands were issued to the objectors many years ago and that they have expended vast sums of money to develop the lands including the building of feeder roads and wooden bridges in the lands which improvements were affected by the acquisitions of the lands. The objectors contended that compensation should be paid for these improvements to the lands affected by the acquisitions of the lands. Thirdly, the objectors contended that the oil palms planted in the lands affected were aged between seven to ten years and valued each palm tree at RM235, compared to a flat rate of RM44 per tree used by the superintendent. F G H

[12] The first issue for the consideration of the court is whether the objectors should be compensated for the lands acquired. The respondent did not pay any compensation to the objectors for the various lots of land acquired relying on para (iii) of the special conditions contained in the provisional leases issued to the objectors. Paragraph (iii) reads the holder of this provisional lease shall not be entitled to a lease of an area equal to the area above stated but only to such I

an area as the survey shows to be available. There is a similar provision in para (i)(d) in the provisional leases. These paragraphs reflect the provisions of s 28 of the Land Code, in particular s 28(3).

[13] For easy reference, s 28 is set out in full as follows:

> (1) No State land shall be alienated under this Code unless and until the survey of the land has been completed to the satisfaction of the superintendent:
>
> Provided that, when the immediate survey of any State land is impracticable, the superintendent may order that a provisional lease in Form C in the First Schedule be executed in favour of the person entitled.
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> (2) Every provisional lease shall specify the approximate extent and area of the land included therein but shall not entitle the holder to a grant or lease of the whole of the area specified.
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> (3) Notwithstanding the payment by him or any rent in respect of the area stated, the registered proprietor of any provisional lease shall have no right to registration of a lease in Form B in the First Schedule for an area equal to the area stated to be alienated if on survey such area is found not to be available.
>
> (4) Save where the context otherwise requires, the provisions of this Code in connection with leases shall apply to provisional leases and references to a lease shall include a provisional lease.

[14] The respondent submitted that reading s 28(1), there shall be no alienation of state land unless and until a survey has been carried out and completed. Secondly, the objectors were obliged under the provisions of s 28 and under the terms and conditions of the provisional leases to carry out and complete the survey of their respective parcels of land. It was implicitly submitted that since no survey has been carried out, there was no alienation of the lands to the objectors. It was also submitted that since no survey has been carried out, the actual areas to be alienated to the objectors have not been determined and did not belong to the objectors.

[15] The above submissions cannot stand because the proviso to s 28(1) qualifies that subsection so that when immediate survey of any state land is impracticable, the superintendent may order that a provisional lease be executed in favour of the person entitled. There is no provision in s 28 or in the

Land Code or in the terms and conditions in the provisional leases in these cases to require that the objectors shall carry out and complete the survey within a certain time.

[16] In the three cases before the court, the superintendent has issued the provisional leases to the objectors in respect of the lands alienated to them pursuant to s 28 of the Land Code. Section 28(4) specifically provides that any reference to lease or a lease shall include a provisional lease. In the Land Code, the term 'alienation' is defined to mean the sale, lease or other disposal by a document of state land by or on behalf of the government and a 'document of title' means a grant, lease of state land, occupation ticket or other document evidencing title to land whenever issued, but does not include a licence, permit or caveat.

[17] After the lands were alienated to the objectors and the provisional leases in respect thereof were issued to them, they have become the registered owner of their respective parcels of land: see *SOP Plantations (Suai) Sdn Bhd v Ading ak Layang & Ors* [2004] 4 MLJ 180, *Novelpac-Puncakdana Plantation Sdn Bhd v Anchih ak Buap* [2000] 4 MLJ 524. Being the registered owners, their rights to the lands are protected under art 13 of the Federal Constitution and any acquisition of their lands or parts thereof must be in accordance with the law ie there must be reasonable compensation for the lands acquired: *S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204.

[18] Accordingly, ss 47, 48 and 49 of the Land Code set out the procedures for the acquisition and compensation of any land to be acquired by the government for any of the purposes specified in s 46 of the Land Code. Under s 51, the superintendent is required to make an inquiry into any objections to the acquisition, the value of the land to be acquired and make an award for the land acquired.

[19] In these three cases, the superintendent had held an inquiry pursuant to s 51 of the Land Code. It did not make sense that the respondent had compensated the objectors for the roads and bridges which were built on the various lots of land acquired but had refused to pay any compensation for the lands actually acquired on the basis that the lands had not been surveyed.

[20] The fact that the lands had not been surveyed pursuant to s 28 of the Land Code could not be interpreted to mean and did not mean that the lands did not belong to the objectors. There are many reasons why the area to be alienated and stated in the provisional leases may upon survey be not available to the objectors. Under s 38, if upon survey there are navigable rivers, streams, canals or creeks in the land, then certain areas of land on either side of the rivers, streams, canals or creeks shall be reserved to the government and are not

available to be alienated to the landowners ('objectors'). Under s 32, if the land to be alienated contains minerals including gravel, clay, stone, coral, shell, guano etc, then these minerals belong to the government which is authorised to enter and extract these minerals or to license others to enter and extract these minerals. In such an event, those parts of the land which contain the minerals may not be available to the landowner. A parcel of land to be alienated may be subject to a right of way under s 34 and the area of the land designated for such right of way may not be available to be alienated to the landowner.

[21] Under s 37 of the Land Code, the government has the rights to enter upon all lands and lay down drains, sewers, pipes and cables for water, gas or electricity or erecting poles and wires for electric power without payment of compensation therefor provided that if such works interfere with improvements, buildings or cultivations, then compensation becomes payable for any damage caused in carrying out such works. It must be noted that s 37 does not provide for the acquisition of the land without payment of compensation.

[22] Therefore, it was erroneous for the respondent to argue that because parts of the lands were required for the gas pipeline project that they were not available to be alienated to the objectors. If those parts of the lands had been reserved for the gas pipeline project prior to their being alienated to the objectors and or were provided for as such in the provisional leases and the objectors being aware of this fact, obviously the lands already reserved for the gas pipeline project were not and could not be available to be alienated to the objectors. However, in the three cases here, the government only decided to acquire parts of the lands for the gas pipeline project after the lands had been alienated to and the provisional leases issued to the objectors.

[23] The lands were alienated to the objectors to be developed into oil palm plantations. The objectors have paid the land premium for each of the parcels of land alienated to them which land premium was calculated based on the size or area of the land alienated. The objectors have taken possession of the lands alienated to them. Since then they have built roads and bridges and developed the lands into oil palm plantations, including in the areas acquired for the gas pipeline project, without any objection or notice from the respondent that they should develop the lands at their own risks because no survey has been carried out and that parts of the lands might be acquired for public purposes without any compensation. The objectors being the registered owners of the lands were clearly entitled to be compensated for those parts of their lands which were acquired for the gas pipeline project: see *Sebekai Plantation Sdn Bhd v The superintendent, Lands and Surveys, Bintulu Division* (Land Reference No 15–04 of 2008 (BTU)).

[24] In a land reference under s 56(1) of the Land Code that the compensation was inadequate, it is for the objector to prove that the award was inadequate: *Superintendent of Lands and Surveys, Sarawak v Aik Hoe & Co Ltd* [1966] 1 MLJ 243. The compensation is to be determined by reference to the market value of the land as at the date of the publication of the s 47 notice and if there is no such s 47 notice, then as at the date of the publication of the s 48 notice: see s 60(1) of the Land Code. In determining the compensation, the court is to be guided by the provisions of ss 60, 61 and 62 of the Land Code.

[25] The objections and claims of the objectors were summarised in the statutory statements as follows:

Pelita Melor Sdn Bhd (15-01-2010)

Item	Description of Claim Items	Incurred cost (RM)
1.	Intersection of existing gravel road(feeder road)with a total length of 824.39 mm	85,043.52
2.	Construction of one wooden bridge as temporary access	122,580.00
3.	Land cost for a total area of 2.4893 ha at RM8.804.62 per ha	21,917.34
4.	Land cost for a total area of 15.138 ha at RM8.804.62 per ha	133,284.34
	TOTAL	RM 362,825.19

Pelita Splendid Plantations Sdn Bhd (15-06-21010)

Item	Description of Claim Items	Incurred cost (RM)
1.	Intersection of existing gravel road(feeder road)with a total length of 824.39 mm	75,326.40
2.	Affected palm tree (7 years old) with total approximately (13.924 ha x 140 palm) = 1,949 palms(RM235-00 per palm)	458,015.00
3.	Land cost for a total area of 13.924 ha at RM8.804.62 per ha	122,595.53
	TOTAL	RM 655,936.93

Baram Trading Sdn Bhd (15-07-2010)

Item	Description of Claim Items	Incurred cost (RM)
1.	Intersection of existing gravel road(feeder road)with a total length of 2.0 KM	254,756.80
2.	Affected palm tree (10years old) with total approximately (16.769 ha x 140 palm) = 2,348 palms(RM235-00 per palm)	551,780.00
3.	Construction of Six (6) wooden bridges as temporary access	731,320.00

4.	Land cost for total area of 16.769 ha with RM8.804.62 per ha	147,644.67
	TOTAL	RM1,685,501.47

[26] The above summary of claims were different from the claims set out in the written submissions, of the objectors and also different from the claims in the respective valuation reports for the different parcels of land.

[27] In Land Reference No 15–01 of 2010, the valuation set out in the letter of objections was based on a valuation report as at 16 March 2007 which was different from the date of the publication of the s 47 notice as at 30 November 2006. Therefore the valuation of RM8,804.62 per hectare used in the letters of objection could not be correct. The new valuation report of the objector was as at 30 November 2006 which has been marked as exh IB. The subject lands were yet to be developed and generally covered with secondary jungles with a gravel road running through Lot 27. The objector used the comparable sales method of valuation and valued the land at RM5,347.50 per hectare. It submitted that based on the new valuation report, it should be compensated RM80,950.46 for the acquisition of Lot 25 and RM220,882.18 for the acquisition of Lot 27.

[28] Assuming the valuation of RM5,347.50 made on behalf of the objector to be correct, the value of Lot 25 which was measured at 15.138 hectares was calculated at RM80,950.45. The claim for RM220,882.64 for the compensation of Lot 27 which was measured at 2.4893 hectares could not be correct unless it included the cost of the land calculated at RM13,311.50, costs to construct a road at RM84,990.65 and the costs to construct a temporary access wooden bridge at RM122,580. The calculations for these were set out in annex D(i) and D(ii) of the valuation report 1B.

[29] The respondent compensated the objector RM145,336 for the road affected. The respondent did not in the statutory statement nor in its valuation report marked as exh 1C set out the valuation or the calculations for the road or bridge. The construction of the temporary access bridge could not be claimed and not payable under s 60 and s 61 of the Land Code.

[30] From the objector's valuer's analysis of the comparables, he came to a valuation of between RM2,718–RM3,706 per hectare. He concluded that taking into consideration the evidence of the value, the location, facilities/amenities available in the estate, topography and age of palms, the fair market value of the subject lands should be around RM5,347.50 per hectare. As stated above, the subject lands were yet to be developed and were generally covered with secondary jungles so it was wrong for the valuer to take into account the age of palms in coming to his valuation of RM5,347.50 per

hectare. The valuer of the respondent valued the subject lands at RM5,000 per hectare. Similarly, the two assessors have valued the lands at RM5,000 per hectare. This was a reasonable and fair valuation for the subject lands.

[31] In Land Reference No 15–06 of 2010, the subject lands were 8 km from Long Lama Bazaar, about 144 km from Miri and accessible by road. The subject lands were agricultural lands planted with oil palms. The surrounding lands were agriculture lands or oil palm plantations. The objector submitted that the oil palms were planted in 2001 with an average of 119 stands per hectare. There was a gravel road running through the lands. The objector in its valuation report marked as 2B valued the lands at RM32,481 per hectare and submitted that it should be compensated RM573,000 for the acquisition of the lands and for the road affected.

[32] Similarly, in Land Reference No 15–07 of 2010, the subject lands were agricultural lands and situated next to the lands in these land references. Out of the 16.769 hectares acquired, 2.879 hectares were vacant land. The objector said that the 13.89 hectares were planted with oil palms in 1998 with an average of 130 stands per hectare. There were roads and bridges on the subject lands. The objector in its valuation report marked as 3B valued the subject lands at between RM26,843–RM27,848 per hectare. The objector in its written submissions submitted that it should be compensated RM1,431,000 for the acquisition of the lands and for the roads and bridges affected. However, in its valuation report marked as exh 3B, the objector's claims were stated at RM1,497,000.

[33] In Land Reference Nos 15–06 of 2010 and 15–07 of 2010 respectively, the objectors used the discounted cash flow method of valuation because it submitted that it was the most suitable method to obtain the market value of the lands which were planted with mature oil palms. The objector then counter-checked the valuations so obtained with the comparable sales method. Based on this valuation method, the objectors came up with the valuations referred to above.

[34] The courts recognise that there are several methods of valuation: see *Ong Yan & Anor v Collector of Land Revenue, Alor Gajah Malacca* [1986] 1 MLJ 405, *Kiu Yuk Chai & Anor v Superintendent of Lands and Surveys, Sarikei Division* [2002] MLJU 371; [2002] 8 CLJ 540. However, the courts have consistently ruled that in the valuation of land, the safest guide is evidence of sales of similar lands of similar quality or position in the locality at or prior to the time of acquisition. The prices paid for such sales can be used as comparables subject to making allowances for all circumstances such as locality, category of land use, size and shape of each parcel of land and date of transaction: *Pentadbir Tanah Daerah Kota tinggi v Siti Zakiyah Sh Abu Bakar &*

Ors [2006] 2 MLJ 426; [2005] 4 CLJ 630, *Leong Kam Hoong v Pentadbir Tanah Daerah Seberang Perai Tengah Bukit Mertajam and another appeal* [2001] 1 MLJ 186; [2001] 1 CLJ 1.

[35] In the valuation reports 2B and 3B, the objectors were able to refer to comparable sales of lands and came up with the analysis of the market values of the subject lands. Therefore there was no necessity to use the discounted cash flow method of valuation. In 2B and 3B, by using the comparable sales method, the objector came up with an analysed market value of between RM16,800–RM19,631.90 per hectare for mature oil palm estates. By using the discounted cash flows method of valuation, the valuation jumped to between RM26,843–RM32,481 per hectare as stated above as being fair and reasonable as claimed in the valuation reports.

[36] Part of the reasons was because the objectors have also included severance in their claims in the valuation report. It was not part of the claims set out in the grounds of objection. The claim for severance which is a fresh claim should not be included: see *New Serendah Rubber Co Ltd v Collector of Land Revenue, Kuala Lumpur* [1981] 2 MLJ 344; [1981] CLJ 131.

[37] The two assessors have used Lot 56 which was transacted in 2007 as the most suitable comparable. Their analysed market value was at RM19,971.18 per hectare. After taking into account the time factor, location, size, terrain, the expiry date of the lease, they adjusted the market value to RM22,966.86 and rounded up to RM23,000 per hectare. They assessed the unplanted land at RM6,000 per hectare. These would be the fair and reasonable market value for the lands.

[38] Therefore, I make the following awards in favour of the objectors as follow:

Land Reference 15–01 of 2010	
17.6273 hectares x RM5,000 per hectare	= RM88,136.50
Land Reference 15–06 of 2010	
13.924 hectares xRM23,000 per hectare	= RM320,252
Less RM47,952 already paid as compensation for the crops affected.	
Land Reference 15–07 of 2010	
Unplanted land of 2.879 hectares x RM6,000 per hectare	= RM17,274
Planted land of 13.89 hectares x RM23,000 per hectare	= RM319.470
	RM336,744
Less RM66,096 already paid as compensation for the crops affected.	

There shall be no order as to costs.

[39] Objectors compensation for the acquired land granted.

Order accordingly.

Reported by Ashok Kumar